

MINUTE ENTRY

LC2000000406

State v. Hawkins

(Case considering: domestic violence; right to confront accusers; & witness credibility)

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution, Article VI, Section 16, and A.R.S. Section 12-124(A). This case has been under advisement and the Court has considered and reviewed the record of the proceedings from the Surprise Municipal Court and the memoranda submitted by counsel.

Appellant was tried and convicted of domestic violence assault and domestic violence disorderly conduct stemming from an argument between Appellant and his wife, Xiaodan Hawkins, at their home. During the trial, Appellant attempted to impeach Xiaodan during cross-examination with testimony concerning the couple's pending divorce and child custody battle, as well as with testimony regarding whether any orders of protection were currently in force against her. Appellant stated that the testimony regarding the divorce was necessary because it gave Xiaodan a motive for exaggerating or lying about what happened during the argument. Similarly, Appellant argued that the orders of protection were indicative of Xiaodan's propensity for violence. The State objected on relevancy grounds and the Court sustained these objections. Appellant now alleges that the trial court erred in sustaining these objections and refusing to admit the impeaching testimony. He claims that, by refusing to allow these lines of questioning, the trial court denied Appellant his fundamental right to confront his accuser under the Confrontation clause of the Sixth Amendment.

The trial court's discretion over the breadth and subject matter of cross-examination is broad.¹ The trial court's decisions concerning matters to be admitted for impeachment testimony will only be overturned if it has abused its discretion.² A trial judge abuses his discretion where his ruling is "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons."³ An appellate court must review all evidence in the light

¹ State v. Hallman, 137 Ariz. 31, 36, 668 P.2d 874 (1983). See also, State v. McGuire, 113 Ariz. 372, 374, 555 P.2d 330 (1976); State v. Hunter, 111 Ariz. 23, 523 P.2d 51 (1974); State v. Thomas, 110 Ariz. 106, 515 P.2d 851 (1973).

² Id.

³ Quigley v. City Court of the City of Tucson, 132 Ariz. 35, 37, 643 P.2d 738 (1982).

most favorable to affirming the trial court's ruling⁴ and must defer to the trial court's judgment if the evidence reasonably sustains that decision.⁵

At the same time, however, this Court takes seriously a witness' right to confront his accusers as afforded by the Sixth Amendment of the United States Constitution and by Article II Section 24 of the Arizona Constitution. The United States Supreme Court has repeatedly held that impeachment testimony concerning witness motivation and biases is an important part of this right.⁶ Similarly, the Arizona Supreme Court has held that defendants have a right to present evidence affecting a witness' credibility⁷ or tending to show a witness may be biased or hostile.⁸ Only where a proffered topic of impeachment is only minimally relevant may a trial court prohibit or limit cross-examination.⁹ In those cases, the trier of fact must have sufficient alternative information concerning the witness' biases and motives to justify the exclusion.¹⁰

There were no witnesses to the argument between Appellant and Xiaodan. Although Officer Hodgkins, the arresting officer, testified regarding what he observed after arriving on the scene, he did not witness the altercation. He also failed to take any photographic evidence of the injuries allegedly suffered by Xiaodan at Appellant's hands. As a result, the outcome of this case hinges upon the credibility of Appellant and Xiaodan and whom the trier of fact believes. A statement made by the trial court in State v. Rothe and cited with approval by the reviewing court in that matter is edifying:

[A]ny witness taking the stand, subjected to cross-examination, may be interrogated as to their attitude, likes and dislikes or differences with any persons against whom they are testifying. That is the rule of evidence that is too well-known for anybody not to know about it who is practicing law. Anybody who takes the stand, you have a right to cross-examine as to whether or

⁴ Paul Schoonover, Inc. v. Ram Construction, Inc., 129 Ariz. 204, 205, 630 P.2d 27 (1981); Gann v. Morris, 122 Ariz. 517, 18, 596 P.2d 43 (App. 1979), Lawrence v. VNB, 12 Ariz App. 51, 57, 467 P.2d 763 (1970).

⁵ Greenough v. Reid, 12 Ariz. App. 167, 170, 468 P.2d 618 (1970).

⁶ See, e.g., Olden v. Kentucky, 488 U.S. 227, 231 (1988); Delaware v. Van Arsdall, 475 U.S. 673, 680 (1986); Davis v. Alaska, 415 U.S. 308, 315-316 (1974); Greene v. McElroy, 360 U.S. 474, 496 (1959).

⁷ 137 Ariz. at 36.

⁸ Id. (quoting State v. Ramos, 108 Ariz. 36, 39, 492 P.2d 697, 700 (1972)).

⁹ Skinner v. Cardwell, 564 F.2d 1381, 1388 (9th Cir. 1977).

¹⁰ Id.

not they had difficulties with the party against whom they are testifying.¹¹

Appellant wished to impeach Xiaodan with testimony that she and Appellant were in the midst of an acrimonious divorce and child custody battle. These facts clearly affect Xiaodan's biases toward Appellant and should have been considered by the trial court in weighing her credibility against that of Appellant. Similarly, Appellant claimed that he did not assault Xiaodan, but instead was attacked by her.¹² Impeachment testimony concerning orders of protection filed against Xiaodan should have been considered in determining whose account of the events in question the trial court believed.

For the reasons that the trial court violated Appellant's rights under the Sixth Amendment of the United States Constitution and Article II, Section 24 of the Arizona Constitution by failing to allow him to confront Xiaodan with this impeachment testimony,

IT IS ORDERED reversing the judgment and sanctions imposed in the Surprise Municipal Court.

IT IS FURTHER ORDERED remanding the matter for a new trial in the same trial court.

¹¹ State v. Rothe, 74 Ariz. 382, 385, 249 P.2d 946 (1952).

¹² See R.T. of April 14, 2000, p. 24, ll. 16-24.